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APPLICATION NO.	FILING DATE	FIRST-NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,851	05/21/1999	HAI BUI	003543.P002	8389

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EXAMINER

DESANTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/316,851

Applicant(s)

BUI, HAI

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,13,16-22,35,37,38 and 40-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-8,13,16-22 and 48-50 is/are allowed.
- 6) ☒ Claim(s) 35,37,38 and 40-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 35, 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barwick, Jr. et al. (USPN 5,700,240) in view of Peterson et al. (WO 93/18802).

Barwick, Jr. et al. discloses the claimed invention that includes an irrigation line, an irrigation reservoir, a pump, a controller that includes a pressure transducer, a valve, a second irrigation reservoir (accumulator) and infusion line, an aspiration line, and wherein the controller varies the speed of the pump which is determined by the pressure sensed, but Barwick, Jr. et al. fails to claim the specifics of the second irrigation reservoir (accumulator) such as the accumulator having a flexible member (Figure 1A, 2, 3 and entire reference).

Peterson et al. teaches an irrigation system with a reservoir (25), pump line (55) coupled to the pump (21a), pressure sensor (13), accumulator (3), controller coupled to pressure sensor (29), aspiration system, pump, line, and pressure sensor and a medical device coupled to the irrigation line. (Page 8, lines 1-2).

Peterson et al. further teaches a flexible membrane (11) separating a first (7) and second (9) chamber of the accumulator and in communication with the pressure transducer/sensor, and irrigation line (Figures 1-6 and entire reference).

At the time of the invention it would have been obvious for one of ordinary skill in the art to replace one of the irrigation reservoirs of Barwick, Jr. et al. with the accumulator of Peterson et al. because Peterson et al. teaches that the accumulator of his invention allows for a constant fluid or constant fluid pressure and at the same time is easy to use and manipulate (Peterson, page 3 lines 12-35).

***Allowable Subject Matter***

3. Claims 1, 3-8, 13, 16-22, 48-50 are indicated as being in condition for allowance.

4. The following is a statement of reasons for the indication of allowable subject matter: independent claim 1 and 48 are allowable because the irrigation system has the ability to have a secondary fluid source from the accumulator that is supplied without any adjustment from a valve means. Independent claim 13 is allowable because of the limitations of the accumulator being directly coupled to the irrigation line and how the accumulator releases pressurized fluid through the irrigation line when needed in accordance to the flow rate of the irrigation line.

***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are not persuasive because the applicant is arguing limitations that are inherent, because the fluid in the accumulating is being pressurized due to the characteristics of the accumulator. Therefore, the fluid leaving the accumulator would be pressurized and thus read on the limitations of the claimed invention.

6. With regards to the 103 rejection not being proper, the examiner has shown motivation in Peterson on page 3, line 12-35 and page 8, line 1-2.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew DeSanto  
Art Unit 3763  
May 2, 2005



NICHOLAS D. LUCCIESI  
SUPERVISORY PATENT EXAMINER  
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